

**OPINION
60-196**

November 22, 1960 (OPINION)

SCHOOL DISTRICTS

RE: High School Tuition - Payment for Four Years by District of Residence

This is in response to your opinion request of November 3, 1960, with regard to a tuition question raised by the clerk of Juzeler School District No. 20.

Your statement of the facts is as follows:

A student from a district which does not offer high school has been attending a high school for four years, but did not graduate. He has now enrolled in the Juzeler School District this year. Mr. Erbstoesser (clerk of the above named school district) wishes to know who is responsible for the tuition for this student who has had the opportunity of attending four years in a public high school, but has not completed his work."

Your question is:

Must the district of his residence pay the tuition for his attendance in this district since state law prohibits the payment to a school district for a student who has already completed four years?"

Your letter does not state the age of the student in question, nor does it state the reason or reasons responsible for the failure to complete high school in four years.

The statutes in point are: sections 15-4701, as amended, 15-4016, as amended, and 15-4013, as amended. Section 15-4701 reads in part as follows:

The public schools of the state shall be equally free, open and accessible at all times to all children between the ages of six and twenty-one,"

Section 15-4016 reads in part as follows:

No school district shall charge or collect from any nonresident high school student, his parents or guardian, or the district of his residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident high school students. However, a high school district shall charge tuition for nonresident high school students. The whole amount of such tuition shall be paid by the district from which the pupil is admitted and shall equal the average cost of high school

education per child in the county less payments from county equalization and state equalization funds. Such costs shall include expenditures from the general and sinking and interest funds. Districts not providing high school education which refuse to pay the tuition charges shall forfeit their rights to county equalization fund payments. The school board of any school district not providing high school education may levy an amount sufficient to pay tuition charges for high school students attending in another North Dakota School district. . . ."

And section 15-4013 reads as follows:

As used in this chapter and in the provisions relating to payments from the county equalization fund, the term 'high school student' shall include only students who:

1. Have completed all of the work of the first eight grades:
2. Are residents of this state; and
3. Have not attended a high school previously for four years nor completed fifteen or more full units of high school work."

The North Dakota case of *Batty v. Board of Education of City of Williston*, 269 N.W. 49 (ND 1936), is in point and apparently determinative of your question. In that case it was held that under statute (section 15-4701) a school board is without power to impose tuition charges on a resident pupil of school age who has failed to complete the high school course within the prescribed time on account of indifference and indolence, notwithstanding that a school board has wide discretion in the management of the schools.

The cited and instant cases are dissimilar in that the cited case involved a student attending high school in the district in which he lived, while the instant case involves a student who attends high school in a district other than the district of his residence. And this difference necessitates consideration of section 15-4013.

It was held in the *Batty* case, *supra*, that section 15-4013 ". . . . does not spell out authority for high schools to charge tuition to pupils of school age residing within the districts wherein the schools are functioning." (Emphasis added). And that case, to repeat, involved one who, because of indifference and indolence, had failed to complete high school in four years. However, the court did state, at page 51, that section 3, chapter 260, 1935 S.L. (now section 15-4013) ". . . . limits to four years the period during which tuition may be paid for high school pupils attending school outside the district of their residence." (Emphasis added).

The court's statement last quoted in the preceding paragraph supplies your question's answer, viz., the residence district of a high school student attending school in another

district cannot pay that student's high school tuition for more than four years. And as the "host" district is required (section 15-4016) to charge tuition for nonresident high school students, it follows that the student himself must meet the tuition demand.

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